

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Priority Mail & First-Class Package Service
Priority Mail & First-Class Package Service
Contract 3

Docket No. MC2015-45

Competitive Product Prices
Priority Mail & First-Class Package Service
Contract 3 (MC2015-45)
Negotiated Service Agreement

Docket No. CP2015-56

PUBLIC REPRESENTATIVE COMMENTS ON
POSTAL SERVICE REQUEST TO ADD PRIORITY MAIL &
FIRST-CLASS PACKAGE SERVICE CONTRACT 3
TO THE COMPETITIVE PRODUCT LIST

(April 7, 2015)

The Public Representative hereby provides comments pursuant to Order No. 2422.¹ In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service Request to add Priority Mail & First-Class Package Service Contract 3 to the competitive product list pursuant to 39 U.S.C. § 3642 and 39 C.F.R. § 3020.30 et seq.²

The Postal Service's Request includes a Statement of Supporting Justification (Statement), a certification of compliance with 39 U.S.C. § 3633(a), a public (redacted) version of Governor's Decision No. 11-6 and related analysis, a public version of Priority Mail & First-Class Mail Package Services Contract 3, and proposed changes to the Mail Classification Schedule (MCS) Competitive product list with the additions underlined.

¹ Order No. 2422, Notice and Order Concerning the Addition of Priority Mail & First-Class Package Service Contract 3 to the Competitive Product List, March 31, 2015.

² Request of the United States Postal Service to Add Priority Mail & First-Class Package Service Contract 3 to the Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, March 27, 2015 (Request).

The Postal Service also filed under seal an unredacted version of Governor's Decision No. 11-6 and Contract 3, and a supporting financial model estimating the contract value during the first year.

According to the Postal Service, Priority Mail & First-Class Package Service Contract 3 is a competitive product "not of general applicability" within the meaning of 39 U.S.C. § 3632(b)(3). Request at 1. The Postal Service also maintains that the prices and classification underlying the instant contract are supported by Governors' Decision No. 11-6.³ The Postal Service further asserts that the Statement provides support for adding Contract 3 to the competitive product list and the compliance of the instant contract with 39 U.S.C. § 3633(a). Request at 2.

The effective date for Contract 3 is one business day following the day on which the Commission issues all necessary regulatory approvals. *Id.*, Attachment B at 5 (Article II). The contract is scheduled to expire 3 years from the effective date unless either party terminates the contract on 30 days' prior written notification, or other specific events. *Id.* (Article III).

COMMENTS

The Public Representative has reviewed the instant contract, the Statement of Supporting Justification, and financial model filed under seal that accompanies the Postal Service's Request. Based upon that review, the Public Representative concludes that Priority Mail & First-Class Package Service Contract 3 should be categorized as a competitive product and added to the competitive product list. In addition, it appears that the instant contract should generate sufficient revenues to cover costs in its first year and thereby satisfy the standards of 39 U.S.C. § 3633(a).

Product List Assignment. Pursuant to 39 U.S.C. § 3642, the Postal Service requests that Priority Mail & First-Class Package Service Contract 3 be added to the competitive product list. 39 U.S.C. § 3642 requires the Commission to consider

³ Decision of the Governors of the United States Postal Service on Establishment of Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, May 22, 2011 (Governors' Decision No. 11-6).

whether “the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.” 39 U.S.C. § 3642(b)(1). Products over which the Postal Service exercises such powers are categorized as market dominant while all others are categorized as competitive.

The Postal Service’s Statement makes a number of assertions that address the considerations of section 3642(b)(1). Request, Attachment D, at 2. These assertions appear reasonable. Based upon the Statement, the Public Representative concludes that the Postal Service’s Request to add Priority Mail & First-Class Package Service Contract 3 to the competitive product is appropriate.

Requirements of 39 U.S.C. § 3633. Pursuant to 39 U.S.C. § 3633(a), the Postal Service’s competitive prices must not result in the subsidization of competitive products by market dominant products; ensure that each competitive product will cover its attributable costs; and, ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service. Based upon a review of the financial model filed under seal with the Postal Service’s Request, it appears the negotiated prices Contract 3 should generate sufficient revenues to cover costs during its first year and therefore meet the requirements of 39 U.S.C. § 3633(a).

As noted above, Contract 3 is expected to remain in effect for a period of three years. During this period, the contract includes a mechanism for the annual adjustment of prices which will improve the likelihood that Contract 3 meets the requirements of 39 U.S.C. § 3633(a) over its lifetime. This concern is also mitigated by the fact that the Postal Service must file revenue and cost data for Contract 3 in future Annual Compliance Reports. This data will permit the Commission to annually review the financial results for Contract 3 in future Annual Compliance Determination (ACD) reports for compliance with 39 U.S.C. § 3633(a).

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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